



# IOWA LEGISLATIVE INTERIM CALENDAR AND BRIEFING

LEGISLATIVE SERVICES AGENCY

DECEMBER 15, 2004

2004 INTERIM No. 18

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- Government Oversight Committee (12/8 & 9/04)
- Studies Committee of the Legislative Council (12/13/04)
- Legal Update: Recording Real Estate Contracts - Criminal Offense

*Iowa Legislative Interim Calendar and Briefing* is published by the Legislative Services Agency (LSA). For additional information, contact: LSA at (515) 281-3566. Pre-recorded Interim Schedule (515) 281-5869.

## December

S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
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## January

S	M	T	W	T	F	S
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30	31					

Tuesday, January 4, 2005

### Administrative Rules Review Committee

9:00 a.m., Room 116, Statehouse

Tuesday, January 4, 2005

### Long-Term Care System Task Force

10:00 a.m., Room 22, Statehouse

Wednesday, January 5, 2005

### Property Taxation Review Committee

10:00 a.m., Room 116, Statehouse

Wednesday, January 12, 2005

### Professional Employer Organization

8:00 a.m., Room 305, Statehouse



# AGENDAS

## INFORMATION REGARDING SCHEDULED MEETINGS

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### **Administrative Rules Review Committee**

Chairperson: Representative George Eichhorn

Vice Chairperson: Senator Paul McKinley

Location: Room 116, Statehouse

Date & Time: Tuesday, January 4, 2005, 9:00 a.m.

Contact Person: Joe Royce, Legal Counsel, Administrative Rules (515) 281-3084

Agenda: Published in the Iowa Administrative Bulletin <http://www.legis.state.ia.us/Rules/Current/Bulletin/>

### **Long-Term Care System Task Force**

Cochairperson: Senator Maggie Tinsman

Cochairperson: Representative Dave Heaton

Location: Room 22, Statehouse

Date & Time: Tuesday, January 4, 2005, 10:00 a.m.

Legislative Services Agency Contacts: Patty Funaro, Legal Services, (515) 281-3040; Tim McDermott, Legal Services, (515) 281-3444

Internet Page: <http://www4.legis.state.ia.us/asp/Internet/Committees/Committee.aspx?id=61>

Agenda: Discuss recommendations and final report.

### **Property Taxation Review Committee**

Cochairperson: Senator Bryan Sievers

Cochairperson: Representative Jim Kurtenbach

Location: Room 116, Statehouse

Date & Time: Wednesday, January 5, 2005, 10:00 a.m.

Legislative Services Agency Contacts: Susan Crowley, Legal Services, (515) 281-3430; Mike Goedert, Legal Services, (515) 281-3922; Jeff Robinson, Fiscal Services, (515) 281-4614

Internet Page: <http://www4.legis.state.ia.us/asp/Internet/Committees/Committee.aspx?id=63>

Agenda: To be announced.

### **Professional Employer Organization**

Temporary Cochairperson: Senator David Johnson

Temporary Cochairperson: Representative Jeff Elgin

Location: Room 305, Statehouse

Date & Time: Wednesday, January 12, 2005, 8:00 a.m.

Legislative Services Agency Contacts: Ann Ver Heul, Legal Services, (515) 281-3837; Ed Cook, Legal Services, (515) 281-3994; Kathy Hanlon, Legal Services, (515) 281-3847

Internet Page: <http://www4.legis.state.ia.us/asp/Internet/Committees/Committee.aspx?id=64>

Agenda: To be announced.



# BRIEFINGS

## INFORMATION REGARDING RECENT ACTIVITIES

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### GOVERNMENT OVERSIGHT COMMITTEE

December 8 and 9, 2004

**Cochairperson:** Senator Mary Lundby

**Cochairperson:** Representative Dwayne Alons

**Overview.** The primary focus of the meeting concerned a discussion of Iowa's role in a multistate lawsuit concerning global warming, a presentation on the Kaizen Business Improvement Process, discussions regarding manure management and required reports from agricultural-related business and industry, and updates from a variety of state agencies or entities providing follow-up information.

**Legislative Council Report.** Committee members reviewed a memorandum and attachments prepared by Legislative Services Agency staff regarding departments and programs reviewed during the 2004 Legislative Interim and selected for review during the 2005 Legislative Session. The report is required on an annual basis and received Committee approval.

**Department of Administrative Services – Update.** Ms. Mollie Anderson, Director, Department of Administrative Services (DAS), provided a status report regarding department operations and the role of DAS in advancing entrepreneurial management in state government. Ms. Anderson summarized various departmental functions characterized as general services, human resources, information technology, and state accounting enterprises; provided rationale for the department's formation; explained the entrepreneurial management model of creative accountable government; related the Governor's goals for DAS and accomplishments of the department to date; supplied cost savings data; and identified steps to be taken by the department in the future.

**Global Warming Litigation.** Iowa Attorney General Tom Miller provided information relating to a multistate lawsuit filed against non-Iowa utility companies emitting carbon dioxide and other gases which may be contributing to global warming. Attorney General Miller stated that Iowa joined the lawsuit in a nonleadership role based upon the rationale that global warming is a universal issue. The lawsuit alleges that the emissions constitute an interstate nuisance, and seeks to stabilize emissions with a gradual reduction over a period of 10 years. Dr. Gene Tackle, Iowa State University, addressed scientific aspects of the global warming trend, concluding that global warming represents a significant threat warranting some form of intervention. Dr. Jay Lehr, Science Director, The Heartland Institute, supplied a 12-point memorandum reaching the opposite conclusion, contending that the Earth's temperature is not increasing significantly as a result of human activity on the planet.

**Kaizen Business Improvement Process.** Ms. Teresa Hay McMahon, Iowa Department of Natural Resources (DNR), related the department's experience utilizing the Kaizen methodology. Ms. McMahon described the methodology as a highly focused, action-oriented, two-to-five-day event whereby an empowered team takes immediate action to improve a specific process. In DNR's case, the process initially identified for improvement concerned air quality construction permits, but the success of the methodology in improving the permitting process has resulted in its application to other departmental functions and is being shared with other state agencies.

**Manure Management.** Ms. Barb Lynch, DNR, addressed manure management practices within the department. Ms. Lynch distributed charts detailing departmental field activities for fiscal years 2001-2002, 2002-2003, and 2003-2004, and noted, by way of trends, that the number of complaints regarding spills appears stable, storm water complaints are increasing as public awareness has been heightened regarding the existence of regulations governing storm water, and feedlot complaints remain numerous but have declined somewhat since the mid-1990s. Committee discussion included the extent to which municipal wastewater complaints impacting public health are received, the duration and utilization of the odor hotline, and the issue of variation in septic tank regulation by county.

**Agricultural-Related Business and Industry – Required Reports.** Mr. Charlie Krogmeier, Secretary of State's Office, distributed a chart summarizing information required to be submitted by businesses and industries owning agricultural land in the state, and indicating the extent to which neighboring states require similar information. The information is required to be submitted on a biennial basis, and consists of whether agricultural land is owned, in which county is it owned, and how many acres are owned. Mr. Steve Moline, Attorney General's Office, stated that there are a number of exemptions from the general reporting requirement. Committee discussion included the observation that, based upon the chart, Iowa appears relatively more rigorous regarding the information required. It was noted that it might be difficult to obtain statewide information from all county recorder's offices in the absence of the reporting requirement.

**Board of Regents.** Mr. Greg Nichols, Iowa Board of Regents, provided background information and discussed the current status of proceeds from the demutualization of Principal Financial as they relate to Regents institutions. Mr. Nichols summarized the respective amounts received based upon employer versus employee contributions, the consensus agreement reached regarding amounts to be returned to the state treasury or invested, and investment results indicating a modest positive return. Mr. Nichols also summarized the development of a tuition growth plan based upon the results of a study



# BRIEFINGS

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*(Government Oversight Committee continued from Page 3)*

undertaken by the board of various policy options for setting tuition at state universities. Mr. Nichols indicated that the plan involves tuition rates increasing by a projected inflationary rate, with each institution also able to request supplementary amounts specific to that institution and required to provide matching funds based upon reprioritized dollars obtained through an internal reallocation of resources. It was noted that this should provide more predictability regarding tuition planning.

**Veterans Trust Fund.** Mr. Wes Ehrecke, Iowa Gaming Association, summarized various allocations of gaming revenue for the benefit of the citizens of the state. He also explained reasons why gaming revenue derived from some sort of new fee would be a different means of providing funding to the Veterans Trust Fund. Mr. Patrick Palmersheim, Iowa Commission of Veterans Affairs, discussed veterans benefits in Iowa, and indicated that the state compares unfavorably with many other states regarding the level of benefits provided and the extent to which dedicated staff are assigned. Mr. Palmersheim also provided an overview of the veterans cemetery project, indicating that current plans project the cemetery opening at some point in late 2006 or early 2007.

**Follow-Up Information.** The following agencies provided updated or additional information requested during previous Committee meetings:

- **Iowa Lottery.** Dr. Ed Stanek, Iowa Lottery, provided further detail about some lottery budget items, and also provided examples of information produced by the lottery regarding the odds in its games, and the state's gambling treatment hotline. Mr. Stanek distributed a packet of material including 10 spreadsheets providing financial and budgetary information.
- **Gambler's Assistance Program.** Ms. Janet Zwick, Iowa Department of Public Health, provided a handout responding to 11 requests for additional explanation or information regarding the program. Among the items addressed were the merits of establishing another HELP line for immediate assistance, amounts allocated for marketing, and plans to keep the Committee informed relating to the payment of claims and amendment of contacts issues.
- **Mechanical Amusement Devices.** Ms. Jean Davis, Iowa Department of Inspections and Appeals, accompanied by representatives from the Department of Public Safety, provided follow-up information relating to the average number of registered devices per county, registration system status, and enforcement activities. It was observed that relatively few complaints are being received, indicating a high rate of compliance.
- **Iowa Ethics Board.** Mr. Charlie Smithson, Ethics and Campaign Disclosure Board, discussed the status of an investigation relating to the possibility of lobbying activities by the Public Strategies Group, and distributed sample draft legislation relating to prohibiting conflict-of-interest employment in another state agency by executive branch personnel. The Legislative Services Agency was requested to prepare a bill draft based on this language for the Committee to consider during the 2005 Legislative Session.
- **Billing Audits.** Mr. Kim Schmett, Coalition for Family and Children's Services in Iowa, reported that recent discussions which have transpired with the Iowa Department of Human Services regarding the issue of rehabilitative treatment and supportive services (RTSS) child welfare provider Medicaid billing audit procedures have yielded positive results. Both Mr. Schmett and Ms. Jan Clausen of the Iowa Department of Human Services agreed that progress has been made, and Ms. Clausen expressed optimism regarding departmental coordination with the Federal Centers for Medicare and Medicaid Services (CMS). Mr. Tim Hood, Superintendent of Schools, Creston, related difficulties the school district is experiencing regarding participation in a pilot program for Medicaid reimbursement. He indicated that the district has been told after completing program training that paperwork it has submitted lacks sufficient documentation. The need for rulemaking regarding this issue, and the role of the Iowa Department of Education and local education agencies relating to regulatory authority, was discussed.
- **Charter Agencies.** Mr. Jim Chrisinger, Department of Management, provided information regarding charter agency agreement differences for FY 2004-2005 versus FY 2003-2004, noting that there are more similarities than differences. Mr. Chrisinger provided specific examples of differences in performance targets and special targets for designated charter agencies, and indicated that the DNR is renewing its status as a charter agency, but that the charter agreement has yet to be finalized. Mr. Joe Royce, Legislative Services Agency, discussed two types of waivers from administrative rulemaking available for charter agencies, and indicated that a general waiver which originally generated some controversy has not been utilized by charter agencies based upon required threshold demonstrations of no negative public impact or due process violation being generated by the waiver.

Internet Page: <http://staffweb.legis.state.ia.us/lfb/committee/oversight/oversight.htm>

**LSA Contacts:** Doug Wulf, Fiscal Services, (515) 281-3250; Sam Leto, Fiscal Services, (515) 281-6764; Rick Nelson, Legal Services, (515) 242-5822; Doug Adkisson, Legal Services Monitor, (515) 281-3884



# BRIEFINGS

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### STUDIES COMMITTEE OF THE LEGISLATIVE COUNCIL

December 13, 2004

**Chairperson:** Senator Stewart Iverson, Jr.

**Vice Chairperson:** Representative Sandra Greiner

**Overview.** The Studies Committee received an in-person progress report from the consultants retained by the Legislature to conduct a study of the socioeconomic effects of gambling on Iowans. Dr. Deepak Chhabra and Dr. Gene Lutz, both of the University of Northern Iowa, presented an update on the conduct of the study.

**Gambling Study Description.** The consultants indicated that the study objectives are to determine the economic impact of gambling at existing Iowa casinos on the local community, the socioeconomic characteristics of gamblers, the social impact of gambling on the local community, and the impact of problem gambling. The consultants stated that the major research methods they would use would be historical data, telephone surveys of local residents, telephone interviews with key personnel, and use of an economic impact model. In conducting the study, the consultants indicated they would examine four study areas within Iowa. Study area I would be all of Iowa, area II would be that area in Iowa within a 50-mile radius of a casino, area III would be counties with a casino, and area IV would be based upon casino employee zip codes.

The consultants briefed the Committee on the data collected so far and described current challenges in obtaining data on all casino visitors and from obtaining information from several convention and visitor bureaus and chambers of commerce.

**Next Steps.** The consultants' PowerPoint presentation will be posted on the Internet page for the gambling study.

<http://www4.legis.state.ia.us/asp/Internet/Committees/Committee.aspx?id=62>

*LSA Staff:* Ed Cook, Legal Services, (515) 281-3994; Mike Goedert, Legal Services, (515) 281-3922

### LEGAL UPDATES

**Purpose.** A legal update briefing is intended to inform legislators, legislative staff, and other persons interested in legislative affairs, in an objective, nonpartisan manner, of recent court decisions, Attorney General Opinions, regulatory actions, and other occurrences of a legal nature that may be pertinent to the General Assembly's consideration of a topic. As with other written work of the Legislative Services Agency, although this briefing may identify issues for consideration by the General Assembly, nothing contained in it should be interpreted as advocating a particular course of action.

#### LEGAL UPDATE: Recording Real Estate Contracts - Criminal Offense

Filed by the Iowa Supreme Court

December 3, 2004

State v. Wolford, No. 130/03-1726

<http://www.judicial.state.ia.us/supreme/opinions/20041203/03-1726.asp>

**Overview.** The Iowa Supreme Court ruled in State v. Wolford that a violation of Iowa Code section 558.46, relating to recording of real estate contracts, constitutes a public offense punishable through criminal prosecution and that execution of a second contract to replace an original contract does not extinguish the seller's statutory obligation to record the original contract.

**Statutory Background.** Iowa Code section 558.46 was enacted in 1998 and requires that installment contracts for the sale of residential real estate must be recorded in the office of county recorder by the seller within 180 days of the date the contract was signed by the seller and buyer. The county recorder is to forward to the county attorney each contract recorded after the expiration of the 180-day period. The contract seller is subject to a fine not to exceed \$100 per day for each day over 180 that the contract is not recorded.

**Factual Background.** An individual entered into a real estate contract with the trustee of the Medinoski Trust for the purchase of a home. Over a year later, the parties entered into a second contract concerning the same property, which included the same terms and conditions as the original contract but with a lower interest rate. The Trust was cited by the State for failing to timely record the second real estate contract. The county attorney charged the Trust with 36 simple misdemeanor counts, one for each day the Trust did not record the second contract after expiration of the 180-day time period. An amended complaint was later filed by the State asserting an additional 246 simple misdemeanor counts based on failure to record the original contract. The associate district court substituted Wolford Corporation (Wolford) as the proper defendant on all 282 counts because the Trust had entered into a management agreement with Wolford. The court ruled that Wolford's failure to timely record the real estate contracts was punishable as a criminal misdemeanor. The district court



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*(Legal Update: Recording Real Estate Contracts - Criminal Offense continued from Page 5)*

affirmed the decision of the associate district court. Wolford Corporation filed a petition for discretionary appeal to the Supreme Court of Iowa which the Court granted.

**Issues.** The Court considered the following issues on appeal:

- 1) Whether a violation of Iowa Code section 558.46 constitutes a public offense punishable through criminal prosecution, and
- 2) Whether execution of the second contract extinguished Wolford's statutory obligation to record the original contract.

**Analysis.** On the first issue, the Court determined that the intent of the General Assembly was to make a violation of Iowa Code section 558.46 a public offense punishable through a criminal prosecution. The Court stated that the General Assembly can draft a criminal statute in any form and it need not use any special language to criminalize an act, i.e., a criminal statute need not include language that a violation of the statute constitutes a misdemeanor or felony. However, use of the words "punishable by a fine" in the statute indicates that the plain language of the statute makes a violation a public offense. The Court noted that Iowa Code section 701.2 defines a "public offense" as "that which is prohibited by statute and is punishable by fine or imprisonment." The Court reasoned that had the General Assembly not intended that a violation of Iowa Code section 558.46 be a public offense, the General Assembly would have used the words "civil fine" or "civil penalty."

The Court also rejected Wolford's argument that violation of Iowa Code section 558.46 was a civil infraction because the fines collected are required to be deposited in the county general fund. The Court stated that the language of the statute, and not disposition of the fines collected, determines whether it is a public offense.

On the second issue, the Court ruled that execution of the second contract did not extinguish Wolford's obligation to file the original contract. The Court stated that the purpose of recording a real estate contract is to give third persons notice of the seller's and buyer's respective interests in the real estate created by the contract and to protect a buyer's interest in the real estate covered by the contract. In this case, the buyer's interest in the real estate was created upon execution of the original contract.

**Dissent.** The dissent stated that Iowa Code section 558.46 does not contain clear and definite language declaring a violation of that section a crime, and where there is doubt, it must be resolved in favor of the defendant. The dissent noted that use of the word "fine" is not determinative of a public offense and that the General Assembly simply intended the word "fine" in Iowa Code section 558.46 to mean "a payment extracted by the government and payable to the government." The dissent also noted that if the General Assembly intended a violation of Iowa Code section 558.46 to be a crime, it would have placed that section in the criminal provisions of the Code.

**LSA Contact:** Susan Crowley, Legal Services, (515) 281-3430